IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

OP.No. 21960 of 2002(L)

PETITIONER:

ELSY K.THOMAS, KALATHIL HOUSE,
NEELAMPEROOR, ALLEPPEY DISTRICT NOW WORKING AS
PART TIME L.G.HINDI TEACHER, ST.THOMAS U.P.SCHOOL,
CORPORATE MANAGEMENT OF SCHOOLS UNDER
ST.THOMAS VALIYAPALLY, ANGADI, RANNI

BY ADV. SRI.SIBY MATHEW
SRI.A.A.MOHAMMED NAZIR

RESPONDENTS:
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1. **RENY K.ABRAHAM W/O.KURIAN K.PETER,**
   KUNDAMATTU HOUSE, ANGADI P.O., RANNI,
   PATHANAMTHITTA DISTRICT

2. **THE MANAGER, CORPORATE MANAGEMENT OF**
   SCHOOLS UNDER ST.THOMAS VALIYAPALLY, RANNI

3. **THE DIRECTOR OF PUBLIC INSTRUCTION,**
   TRIVANDRUM

4. **THE DISTRICT EDUCATIONAL OFFICER,**
   PATHANAMTHITTA

BY GOVERNMENT PLEADER SMT.M.R.SREELATHA
R1 BY ADV. SRI.V.PHILIP MATHEW
SRI.BOBY MATHEW
SMT.K.MEERA
SRI.E.T.MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.No.37660/2002 IN O.P.NO.21960/2002

DISMISSED.

22.11.2007 **Sd/-S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF APPOINTMENT ORDER DATED 6.6.2001 ISSUED BY THE 2ND RESPONDENT.

EXT.P2: COPY OF GOVERNMENT ORDER NO.G.O.(P) NO.12/99/P&ARD DATED 24.5.1999.

EXT.P3: COPY OF CLAIM FOR APPOINTMENT FILED BY THE 1ST RESPONDENT DATED 10.10.2001 BEFORE THE 3RD RESPONDENT.

EXT.P4: COPY OF OBJECTION DATED 3.6.2002 FILED BY THE PETITIONER AGAINST EXT.P3 BEFORE THE 3RD RESPONDENT.

EXT.P5: COPY OF OBJECTION DATED 3.6.2002 FILED BY THE 2ND RESPONDENT AGAINST EXT.P3 BEFORE THE 3RD RESPONDENT.

EXT.P7: COPY OF TERMINATION ORDER NO.ET3/74991/DPI/D.DIS DATED 12.7.2002 ISSUED BY THE 3RD RESPONDENT.

TRUE COPY

P.A TO JUDGE

S.SIRI JAGAN,J

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O.P.No.21960 of 2002

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Dated this the 22nd day of November, 2007

JUDGMENT

The petitioner in this writ petition is a Lower Grade Hindi Teacher, working in the second respondent's school. She is challenging Ext.P6 order of the Director of Public Instruction, directing the second respondent-Manager to appoint the first respondent herein as a Lower Grade Hindi Teacher in recognition of her claim for compassionate employment under Rule 51 B of Chapter XIV A of the KER, after terminating the service of the petitioner. The facts necessary for disposal of this writ petition are as follows:

2. The first respondent's mother was a teacher in the second respondent's school. She died on 29.5.1993 while in service. The first respondent filed an application dated 15.4.1998 by claiming appointment under Rule 51 B of Chapter XIV A of the KER. After a brief litigation, ultimately by the judgment reported in **Reni K.Abraham v. State of Kerala (1999 (1) KLT 249)** the claim of the first respondent was

rejected on the ground that married daughters are not entitled for employment under the Compassionate Employment Scheme. The first respondent challenged the same in Writ Appeal No.287/1999, which was also dismissed.

3. In the meanwhile the petitioner was appointed as a Lower Grade Hindi Teacher in the school in a short term vacancy for a period from 7.1.1999 to 31.3.1999. She was again appointed in another short term vacancy for the period from 21.6.1999 to 2.11.1999. Recognising the petitioners right under Rule 51 A of Chapter XIV A of the KER, she was appointed in a regular vacancy which arose on 6.6.2001 and then onwards she has been working as such and all her appointments were duly approved also. In the meanwhile the Government modified the earlier scheme for compassionate employment to dependents of Government servants dying in harness, by introducing G.O.(P). 12/99/P& RD dated 24.5.1999 which is currently in vogue. The Government later considered the question as to whether married daughters are also entitled to be considered for employment under the compassionate employment scheme. By a letter No.61701/J3/2000 G.Edn. Dated 6.1.2001 addressed to the Director of Public Instruction the Government clarified that

married sons and married daughters may also to be considered for benefit of compassionate employment scheme, if they are otherwise eligible. In the meanwhile the first respondent filed RP.No.393/1999 in writ appeal No.287/1999 raising a contention that married daughters are also entitled to benefits of dying in harness scheme. The review petition was also dismissed by order dated 2.8.2006 holding that the grounds urged by the first respondent are available in appellate remedy. Thereafter, by Ext.P3 application dated 10.10.2001, the first respondent moved the Director of Public Instruction claiming benefits of compassionate employment scheme in view of the clarification dated 6.1.2001 referred to above. On Ext.P3, the Director of Public Instruction passed Ext.P6 order holding that the petitioner is entitled to benefit of Rule 51 B of Chapter XIV A and on that finding directed the second respondent-Manager to appoint as her Hindi Teacher by terminating the service of the junior-most Hindi Teacher under the corporate management. Ext.P6 is under challenge in this writ petition, at the instance of the petitioner since she is the junior-most Hindi teacher liable for such termination of service to accommodate the 1st respondent.

4. The petitioner raises several contentions in support of this writ petition. First is that, the first respondent lost her rights by virtue of the decision in W.A.No.287/1999 confirmed in the order in RP.No.393/1999. Therefore, she cannot reopen the matter by filing another application for appointment under Rule 51 B. Second is that the eligibility for compassionate employment scheme is now governed by the G.O dated 21.5.1999 Clause 3 of which specifically stipulates that applications received on or after the date of issue of order shall be disposed in accordance with that order and pending applications on the date of that order shall be dealt with as per the earlier orders. Therefore, Ext.P3 application could not have been considered under the 1999 Government Order since the same is filed beyond the period prescribed in the Government Order. Her claim cannot now be considered on the basis of the original application dated 15.4.1998 since her claim had already been considered and rejected finally by judgment in writ appeal No.287/1999. Petitioner raises another contention that even if the 1st respondent's claim can be validly considered on the basis of Ext.P3 application, since the petitioner has already obtained rights under Rule 51 A of Chapter XIV A of the KER that claim

would override the claim of the first respondent under Rule 51 B as per decided case of this Court.

5. In answer to these contentions the first respondent would contended that although petitioner's original claim was rejected in the writ appeal, when there is a change of law she is certainly entitled to take advantage of that change in law. As per the clarification dated 6.1.2001 the first respondent became entitled to stake claim for appointment under Rule 51 B, which alone has been recognised by the impugned order, is the contention raised by the 1st respondent.

6. Of course, the petitioner would contend that the first respondent was not a dependent of her mother at the time of death of her mother since she was already married by that time. He would also point out that in Ext.P3 application also the first respondent does not state that she was a dependent of her deceased mother at the time of death of her mother. To controvert this contention, along with her counter affidavit, the first respondent has produced documents showing the income of her husband and asserted that she was a dependent of her mother at the time of her mother's death. She would also contend that at the time of death of her mother the applicable

Government Order did not stipulate any time limit and therefore her application cannot be rejected on the ground of limitation prescribed in 1999 Government Order.

7. I have considered the rival contentions in detail. There cannot be any dispute now that till the clarification dated 6.1.2001 the petitioner did not claim benefit of Rule 51 B after her earlier claim was rejected by the judgment of the Division Bench in the writ appeal filed by the 1st respondent. The first respondent's claim under the old scheme stands concluded by the Division Bench decision. Although, the 1st respondent would try to contend that even under the old scheme married daughters were also entitled to be considered for compassionate employment, such contention cannot be countenanced in view of the Division Bench decision which is binding on the 1st respondent. As such the first respondent's claim can now be considered only on the basis of Ext.P3 application dated 10.10.2001, especially in view of Clause 3 of the 1999 Government Order which says that pending applications as on the date of that order shall be dealt with as per the earlier orders. Assuming that the first respondent's claim can now be considered under the 1999 Government order and clarification

dated 6.1.2001, that can only be subject to the conditions in the 1999 Government order. 1999 Government order stipulates a time limit of two years from the date of death of the deceased employee for claiming compassionate employment, which period was long over on 10.10.2001. Secondly, the petitioner was appointed on 6.6.2001 on which date she had already become a Rule 51 A claimant by virtue of her earlier approved service for the period from 7.1.1999 to 31.3.1999 and 21.6.1999 to 2.11.1999 which appointments were not and could not have been validly challenged by the 1st respondent. This Court has, in the decision reported in **Deepthy Susan Jacob v. State of Kerala (1996 (2) KLT 1033)** and **Manager N.S.S. Karayogam U.P.School v. Soumya Nair (2005 (2) KLT 867),** held that a claimant under Rule 51 B is entitled to appointment only after satisfying the claims of those who have already acquired a vested right for appointment under Rule 51 (A) . Therefore the first respondent's claim on the basis of Ext.P3 application dated 10.10.2001 can be considered only after satisfying the superior claim of the petitioner under Rule 51(A) in recognition of which only she had been appointed on 6.6.2001. Therefore, in any event the first respondent cannot now claim appointment in

preference to the petitioner.

8. In the above facts and circumstances, I am satisfied that Ext.P6 is liable to be quashed, I do so. I also declare that the first respondent cannot claim appointment under Rule 51 B in preference to the petitioner. However, I direct the second respondent manager to accommodate the first respondent in any vacancy in the post of Teacher or Clerk or Peon or Full Time Menial commensurate with her qualifications in the next arising vacancy in any one of these posts.

The writ petition is disposed of accordingly.

S.SIRI JAGAN, JUDGE

dvs